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8 Attorneys for DEFENDANT ERNST & YOUNG  
9 LLP

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA  
13 SACRAMENTO DIVISION  
14

15 JOSEPH LANDON, individually and  
16 on behalf of all others similarly  
17 situated,

18 Plaintiffs,

19 v.

20 ERNST & YOUNG LLP, a limited  
liability partnership; ERNST &  
21 YOUNG U.S. LLP, a limited liability  
partnership; and DOES 1-100,  
22 inclusive,

23 Defendants.

Case No. 2:08-cv-00889-GEB-DAD

**DECLARATION OF STEPHANIE  
DER IN SUPPORT OF  
DEFENDANTS ERNST & YOUNG  
LLP'S AND ERNST & YOUNG U.S.  
LLP'S MOTION TO TRANSFER**

*[Defendants Ernst & Young LLP's and  
Ernst & Young U.S. LLP's Motion to  
Transfer; Declaration of Daria Hodapp  
in Support Thereof Filed Concurrently  
Herewith]*

Date: June 2, 1008  
Time: 9:00 AM  
Ctrm: 10

**DECLARATION OF STEPHANIE DER**

I, Stephanie Der, certify and declare as follows:

1. I am an attorney at law duly licensed to practice in the Eastern District of California and an associate in the law firm of Akin Gump Strauss Hauer & Feld LLP, attorneys of record for defendants Ernst & Young LLP and Ernst & Young U.S. LLP in this action, and attorneys of record for Ernst & Young LLP in *Ho v. Ernst & Young LLP*, Case No. CV 05-04867. I have personal knowledge of the facts stated herein, and if called and sworn as a witness, I would and could testify competently under oath thereto. I submit this declaration in support of defendants Ernst & Young LLP's and Ernst & Young U.S. LLP's Motion to Transfer.

2. *Ho v. Ernst & Young LLP*, Case No. CV 05-04867 was filed on September 27, 2005 in Santa Clara County Superior Court and was removed to the Northern District of California on November 29, 2005, where it was assigned to Judge Jeremy Fogel and Magistrate Judge Howard Lloyd. *Ho* is brought on behalf of a putative class of individuals who work or worked for Ernst & Young in the job positions of Staff 1, Staff 2, Senior 1, Senior 2 and challenges Ernst & Young's classification of these employees as exempt from California's overtime and meal break laws. Attached hereto as **Exhibit A** is a true and correct copy of the First Amended Complaint filed in that action.

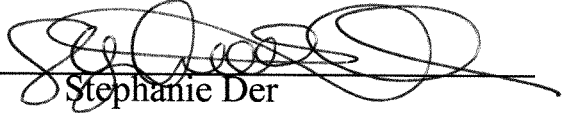
3. Attached hereto as **Exhibit B** is a true and correct copy of a declaration signed by Plaintiff Joseph Landon on February 6, 2008 in support of class certification in *Ho v. Ernst & Young LLP*.

4. Judge Fogel and Magistrate Judge Lloyd have decided numerous motions brought by both parties in *Ho v. Ernst & Young LLP*, including Defendant's Motion for Protective Order, Plaintiff's Motion to Amend Complaint, Defendant's Motion for Summary Judgment as to named plaintiff David Ho, and five motions to compel regarding various discovery issues. Defendant's Motion for Summary Judgment as to named plaintiff David Ho was granted on March 4, 2008 and Defendant's Motion for

1 Summary Judgment as to Sarah Fernandez, the remaining plaintiff, is currently pending  
2 before Judge Fogel.

3  
4 I declare under penalty of perjury under the laws of the United States that the  
5 foregoing is true and correct.

6 Executed on this 5th day of May, 2008, in Los Angeles, California.

7  
8   
9 Stephanie Der

**Exhibit A**

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1 Mark R. Thierman, SB# 72913  
2 Leon Greenberg, SB# 226253  
3 THIERMAN LAW FIRM  
4 7287 Lakeside Drive  
5 Reno, NV 89511  
6 Telephone (775) 284-1500

7 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 -----X  
11 DAVID HO, JOHN MAXTON, NATHAN LAY,  
12 and SARAH FERNANDEZ on behalf of  
13 themselves and all others similarly  
14 situated and on behalf of the general  
15 public and DOES #1-20,

Case No. 05-04867-JF (HRL)

16 Plaintiffs,

PLAINTIFFS' FIRST AMENDED  
COMPLAINT

17 -against-

18 ERNST & YOUNG LLP

19 Defendants.

20 -----X  
21 COMES NOW PLAINTIFFS, on behalf of themselves and all others  
22 similarly situated and on behalf of the general public, hereby  
23 allege:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over the claims alleged herein  
26 because Plaintiff seek relief pursuant to Business & Professions  
27 Code Section 17200 for the failure to pay wages due for work  
28 performed within the County of Santa Clara, among other locations  
within the State of California.

2. Jurisdiction is vested in this Court pursuant to the prior

1 removal of this case from the Superior Court of the State of  
2 California to this Court on November 29, 2005 by the defendant  
3 pursuant to the applicable provisions of 28 U.S.C. §§ 1441-1450.  
4

5  
**PARTIES**

6 3. Plaintiff DAVID HO (one of the "named plaintiffs") resides  
7 in San Jose California.  
8

9 4. Plaintiff DAVID MAXTON (one of the "named plaintiffs")  
10 resides in Oceanside California.

11 5. Plaintiff NATHAN LAY (one of the "named plaintiffs")  
12 resides in South San Francisco California. Plaintiff SARAH  
13 FERNANDEZ (one of the "named plaintiffs") also resides in the State  
14 of California.

15 6. Defendant ERNST & YOUNG is a partnership and one of the  
16 nation's leading and largest public accounting firms employing  
17 numerous certified public accountants ("CPA's") and other personnel  
18 with offices and employees in California and throughout the United  
19 State  
20

21 7. The named plaintiffs are former employees of the defendant  
22 and those similarly situated to the plaintiffs are former or current  
23 employees of the defendant.

24 **CLASS ACTION AND REPRESENTATIVE ALLEGATIONS**

25 8. The named plaintiffs bring this action on their own behalf,  
26 and on behalf of the class of all persons similarly situated and on  
27 behalf of the general public.

28 9. The class consists of all persons employed by the Defendant  
within the State of California as "Staff One" or "Staff Two" or

1 "Senior One" or "Senior Two" personnel, or similarly titled  
2 personnel who were performing the same sort of functions of the  
3 named plaintiffs, and subject to the same salaried compensation  
4 system, from four years preceding the commencement of this action  
5 through the date of judgment after trial who were not compensated  
6 for their work and overtime work as required by California law.  
7

8 10. The named plaintiffs seek to represent a class of persons  
9 who are so numerous that the joinder of each member of the class is  
10 impracticable.

11 11. There is a well-defined community of interest in the  
12 questions of law and fact affecting the class the named plaintiffs  
13 represent. The class members' claims against Defendant involve  
14 questions of common or general interest, in that their claims are  
15 based on Defendant's implementation and utilization of a policy  
16 pursuant to which all members of the class were denied payment of  
17 wages and overtime compensation during the time in question. These  
18 questions are such that proof of a state of facts common to the  
19 members of the class will entitle each member of the class to the  
20 relief requested in this Complaint.  
21

22 12. The named plaintiffs will fairly and adequately represent  
23 the interests of the class, because the named plaintiffs are members  
24 of the class and the claims of the named plaintiffs are typical of  
25 those in the class.

26 **FACTS**

27 13. Plaintiffs hereby incorporate each and every allegation  
28 contained of this Complaint above and reallege said allegations as

1 though fully set forth herein.

2 14. During all times relevant herein, the class members  
3 supported the business of Defendant by working under the direction  
4 of their superiors, the managers and partners of the defendant.  
5 Such work involved the class members assisting their superiors in  
6 the production of the products and services provided by the  
7 defendant's business to its customers. The great majority of such  
8 work by the class members included, but was not limited to,  
9 secretarial, clerical, and data entry support work, including filing  
10 papers, organizing and assembling documents, taking notes of  
11 meetings, entering spreadsheet data and formatting spreadsheets, and  
12 similar tasks requiring very little or no exercise of independent  
13 judgment or discretion or any advanced professional degree or  
14 license or the prior completion of any extended course of academic  
15 or technical studies in any art or science.  
16

17 15. Defendant compensated the named plaintiffs and the class  
18 members on a "salary only" basis whereby the named plaintiffs and  
19 the class members were paid a fixed salary for all hours worked  
20 during each week.  
21

22 **FIRST CAUSE OF ACTION: Overtime Wages**

23 (California Labor Code Section 1194)

24 16. Plaintiffs hereby incorporate each and every allegation  
25 contained of this Complaint above and reallege said allegations as  
26 though fully set forth herein.

27 17. At all relevant times, the named plaintiffs and the  
28 plaintiff class members were required to work in excess of eight



1 hours during the workday and in excess of 40 hours during the  
2 workweek and/or worked more than six consecutive days in a workweek.

3 18. During all relevant times the Wage Order No. 4 of the  
4 California Industrial Welfare Commission provided that "...nonexempt  
5 employees must be paid an overtime premium for all hours worked in  
6 excess of eight during the workday and in excess of 40 during the  
7 workweek, as well as for work performed on the seventh workday in a  
8 work week...."

9  
10 19. Although the named plaintiffs and the plaintiff class  
11 members worked overtime as that term was defined in the relevant  
12 wage orders, Defendant failed and refused to pay the legally  
13 required state overtime premiums.

14 20. Therefore, Plaintiffs demand overtime compensation as  
15 provided under California law.

16 SECOND CAUSE OF ACTION: OVERTIME AND UNPAID WAGES

17 (California Labor Business and Professions Code §§17200, et seq)

18 21. Plaintiffs hereby incorporate each and every allegation  
19 contained of this Complaint and reallege said allegations as though  
20 fully set forth herein.

21  
22 22. Throughout the above-described period Defendant  
23 repeatedly misrepresented to the members of the plaintiff class and  
24 the general public that the plaintiffs were "professional" or other  
25 sorts of employees exempt from the overtime laws of the State of  
26 California, the defendant also failing to require or have the class  
27 members take specified paid and/or unpaid meal and rest breaks as  
28 required by California law and did not pay the class members an hour

1 of additional wages per day for such unreceived break time, as  
2 required by California law.

3 23. This misrepresentation and omission by the defendant gave  
4 defendant a competitive advantage over other employers who  
5 legitimately paid their workers the proper overtime wages and other  
6 wages required by California law and who also gave the employees the  
7 meal and rest breaks required by California law or the additional  
8 wages required by California law in lieu thereof.  
9

10 24. Defendant's conduct described in this Complaint  
11 constitutes an unlawful business practice in violation of the  
12 provisions of Business and Professions Code §§17200, et seq.

13 25. Therefore, Plaintiffs pray for restitution and injunctive  
14 relief for all class members for all wages due and an order pursuant  
15 to Business & Professions Code Section 17203 to cease from failing  
16 to pay overtime wages to workers employed or who render services to  
17 Defendant within California.

18 THIRD CAUSE OF ACTION: STATUTORY INTEREST ON UNPAID WAGES

19 (Labor Code Section 218.6)  
20

21 26. Plaintiffs hereby incorporate each and every allegation  
22 contained of this Complaint above and reallege said allegations as  
23 though fully set forth herein.

24 27. California Labor Code Section 218.6 states: In any action  
25 brought for the nonpayment of wages, the court shall award interest  
26 on all due and unpaid wages at the rate of interest specified in  
27 subdivision (b) of Section 3289 of the Civil Code, which shall  
28 accrue from the date that the wages were due and payable as provided

1 in Part 1 (commencing with Section 200) of Division 2."

2 28. Subdivision (b) of Section 3289 of the California Civil  
3 Code states: "If a contract entered into after January 1, 1986, does  
4 not stipulate a legal rate of interest, the obligation shall bear  
5 interest at a rate of 10 percent per annum after a breach."

6 29. Therefore, Plaintiffs demand interest on the amount of  
7 wages due weekly at the rate of 10% per annum as required by law.  
8

9 FOURTH CAUSE OF ACTION: WAITING PENALTIES

10 (California Labor Code Section 203)

11 30. Plaintiffs hereby incorporate each and every allegation  
12 contained of this Complaint above and reallege said allegations as  
13 though fully set forth herein.

14 31. California Labor Code Section 203 states "If an employer  
15 willfully fails to pay, without abatement or reduction, in  
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an  
17 employee who is discharged or who quits, the wages of the employee  
18 shall continue as a penalty from the due date thereof at the same  
19 rate until paid or until an action therefor is commenced; but the  
20 wages shall not continue for more than 30 days."  
21

22 32. The named plaintiff and the majority of class members  
23 terminated employment more than 30 days prior to the filing of this  
24 lawsuit.

25 33. Therefore, Plaintiffs demands waiting penalties according  
26 to law.  
27  
28

1 FIFTH CAUSE OF ACTION: WAGES FOR WORKED BREAK TIME

2 (California Labor Code Section 226.7)

3 34. Plaintiffs hereby incorporate each and every allegation  
4 contained of this Complaint above and reallege said allegations as  
5 though fully set forth herein.

6 35. Pursuant to California Labor Code Section 226.7, and the  
7 wage orders issued pursuant to said statute, the plaintiffs and the  
8 class members were entitled to paid 10 minute breaks for every four  
9 hours of daily employment and an unpaid meal break of 30 minutes  
10 after five hours of daily employment.

11 36. Although the plaintiffs and the class members regularly  
12 worked for amounts of time each day that would entitle them to the  
13 paid and unpaid rest and meal breaks provided for under California  
14 Labor Code Section 226.7 they often did not receive such daily rest  
15 and meal breaks and they did not receive one hour of additional pay  
16 on the days they did not receive such breaks.

17 37. Therefore, Plaintiffs demand the payment of an additional  
18 one hour of pay for each day that they were not provided with the  
19 breaks required by California law.  
20  
21

22  
23 NOW THEREFORE, Plaintiffs pray for relief for themselves and  
24 all class members as follows:  
25

26 1. Premium pay for overtime hours worked according to the  
27 Wage Orders of the Industrial Welfare Commission applicable at the  
28 time work was performed;

2. One hour of additional wages for each day that they worked and were not provided with the breaks required by California law;

3. Interest at the legal rate of 10% per annum, from each week payment of wages were due for each and every class member;

4. Waiting penalties as provided for under Labor Code Section 203;

5. Attorneys fees and costs as required by Labor Code Section 1194;

6. Equitable and injunctive relief including restitution;

7. Such further relief the court deems just and reasonable.

Dated this 1st day of June, 2007

Thierman Law Firm

/s/

By: \_\_\_\_\_

Leon Greenberg, SB# 226253  
Mark Thierman, Esq. SB# 72913  
THIERMAN LAW FIRM  
7287 Lakeside Drive  
Reno, NV 89511  
(775) 284-1500  
Attorney for Plaintiff

## **Exhibit B**

1 Leon Greenberg, SB# 226253  
2 Attorney at Law  
3 633 South 4<sup>th</sup> Street #9  
4 Las Vegas, NV 89101  
5 Telephone (702) 383-6085

6 Attorneys for Plaintiffs

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

9 -----X Case No. 05-04867-JF  
10 (HRL)

11 DAVID HO, JOHN MAXTON, NATHAN LAY,  
12 and SARAH FERNANDEZ on behalf of  
13 themselves and all others similarly  
14 situated and on behalf of the general  
15 public and DOES #1-20,

16 Plaintiffs,

17  
18 -against-

19 ERNST & YOUNG LLP

20 Defendants.

21 -----X

22 DECLARATION OF JOE LANDON

23 JOE LANDON, hereby affirms, under the penalty of perjury,  
24 that:

25 1. I am a former employee of defendant Ernst & Young ("EY")  
26 and offer this declaration in support of the plaintiffs' motion to  
27 certify this case as a class action. While I would greatly prefer  
28 to see this case certified as a class action I may, if class  
certification is denied, seek to bring an individual lawsuit  
against the defendant. I believe a class action lawsuit is a  
better way for me to vindicate my interests because I will not be  
burdened with having to bring an individual lawsuit.

2. I was employed by the defendant from approximately August

1 16, 2005 to May 23, 2006. During that time period I held the  
2 position of Staff I. I was assigned to the defendant's Roseville,  
3 California office in its Assurance and Advisory Business Services  
4 ("AABS") unit dealing with audit matters. I was not a licensed  
5 CPA while employed by the defendant. I earned a baccalaureate  
6 degree in Accounting and Finance and a master's degree in  
7 accounting with an emphasis on assurance services prior to coming  
8 to work for EY.

9  
10 3. While employed by the defendant I was always paid a  
11 salary, i.e., a set flat amount per week for all hours that I  
12 worked each week. I often worked in excess of 40 hours per week  
13 for the defendant but received no additional pay during such weeks  
14 (I only received my regular salary).

15  
16 4. The job functions that I describe in this statement, and  
17 that I performed, are the same ones that the other staff and  
18 senior employees in the EY unit (AABS audit) and office that I  
19 worked in spent the majority of their working time performing.  
20 They often performed those tasks for percentages of their working  
21 time that were comparable to the ones I experienced. I know that  
22 to be true based upon my personal observations of the sort of work  
23 such other staff and senior employees were performing. The only  
24 exception to this may have been a small number of persons in the  
25 senior 2 or 3 position, who because of their greater experience or  
26 longevity with EY were given "higher level" tasks to perform. The  
27 senior 2 or 3 employees would, to some extent, be involved with  
28 the actual substantive planning and analysis of the audit. Even



1 though that was so, the senior 2 employees certainly (and the  
2 senior 3 employees probably) spent the majority of their time  
3 doing the same sort of tasks I describe in this statement. I came  
4 into contact with approximately 40 staff or senior employees  
5 during the course of my employment with EY.

6  
7 5. My work for the defendant consisted almost exclusively of  
8 audit support, compliance, or assembly work. By this I mean I was  
9 only peripherally involved in making decisions about the scope of  
10 an audit or how an audit should be conducted or in making any of  
11 the audit conclusions. Rather, the vast majority of my job was to  
12 assist in processing the paperwork and data behind the audit.  
13 This meant most of my job functions involved clerical or support  
14 type work involving little or no exercise of independent judgment  
15 or discretion. Those sort of functions did not require the use of  
16 any of the knowledge I obtained from receiving my undergraduate  
17 and graduate degrees. The following is an accurate approximate  
18 breakdown on a percentage basis of my typical work activities (I  
19 am not including time spent on employment training or education or  
20 on breaks or waiting for work assignments) for the defendant:

21 i) I spent about 30% of my working time entering data  
22 into Excel spreadsheets, formatting or organizing EY client  
23 data in spreadsheets in the manner that EY required and  
24 documenting (verifying) that the data conformed (was being  
25 processed in compliance with) the detailed written EY audit  
26 plan I was working with. This task, outside of confirming  
27 that the data complied with the dictates of the audit plan  
28 (for example, being sure a particular item marked for

1 by any clerk or secretary without any specialized training in  
2 accounting or finance.

3 iv) I spent about 5% of my working time making copies.

4 v) I spent about 10% of my working time organizing,  
5 filing, and copying documents for audit binders. This task  
6 involved organizing documents according to set and easy to  
7 understand criteria and could have been performed by any  
8 literate clerical worker.

9 vi) I spent about 20% of my working time "ticking and  
10 tying" financial information. This meant I would match or  
11 transfer information from one document to another. This would  
12 involve finding the source (among an EY client's work papers)  
13 for a particular number and then referencing or footnoting  
14 where it came from in another form or financial statement.  
15 This work did not involve actually analyzing the client's  
16 financial documents to calculate these figures. The figures  
17 were already prepared and in the client's work papers. My job  
18 was to find the figures (and sometimes add them together) and  
19 reference in another form or financial statement where I got  
20 the figures from. This work did not require any advanced  
21 education (and did not involve anything I learned as part of  
22 my graduate and undergraduate education) but just diligence to  
23 find the particular figures in the client's work papers and  
24 reference that figure (and be sure it was the same figure for  
25 the same described item) in another set of papers and that the  
26 same figure for the same item was consistently stated. In the  
27 publishing field this would be considered "proof reading"  
28 (making sure that the right numbers were consistently stated)

1 and "fact checking" (checking to be sure that the proper  
2 source of all numbers was correctly cited).

3 vii) I spent about 10% of my working time performing SOX  
4 404 compliance and control testing tasks. I would read the  
5 prior year narrative of how the client handled particular  
6 financial transactions and find out if there were any changes  
7 from those previously documented procedures (I would inquire  
8 about this with the designated client contact person). If  
9 there were changes I would write up what those changes were  
10 and advise my superiors about them (I did not decide what  
11 advice, if any, should be given to the client about any such  
12 changes). I also performed "walkthroughs" to verify that the  
13 client's claimed transaction procedures were, in fact, being  
14 used; taking samples of client transactions to use to verify  
15 the client transaction handling procedures; and reviewing  
16 transactions to confirm that the client had actually performed  
17 the various steps (had gotten approval by the required  
18 personnel) for those transactions, as per the client's stated  
19 internal procedures (this is called control test work).

20 viii) I spent about 5% of my working time performing  
21 other miscellaneous tasks, including such logistic type  
22 functions as getting meals for audit team members or  
23 replenishing the audit team with audit materials.

24 6. As I have explained in this statement, my work for EY did  
25 not involve any significant level of intellectual application.  
26 Nor did it require any advanced training or education. Most of my  
27 work involved the performance of secretarial or clerical or  
28 support type tasks (including typing, proofreading, data entry,

1 copying and filing documents, and so forth). Because my job  
2 required that I deal with financial information (such as inputting  
3 EY client transactions into a spreadsheet) attention to detail was  
4 important. I was also expected to report to my superiors any  
5 irregularities that I came across in my work, but I had no  
6 authority to resolve those irregularities or determine whether  
7 they were, in accounting terms, "material." Any diligent  
8 attentive person with basic arithmetic, bookkeeping, English  
9 language, and typing skills, and the ability to use common, non-  
10 complex, computer software programs, such as Excel or word  
11 processing software, could have successfully performed my job.

12 7. I have read the foregoing statement and affirm that it is  
13 true and correct.

14   
15 JOE LANDON

16 2/6/08  
17 Date  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, CA 90067. On May 5, 2008, I served the foregoing document(s) described as:

**DECLARATION OF STEPHANIE DER IN SUPPORT OF DEFENDANTS  
ERNST & YOUNG LLP'S AND ERNST & YOUNG U.S. LLP'S MOTION TO  
TRANSFER** on the interested party(ies) below, using the following means:

Wayne S. Kreger, Esq.  
William A. Baird, Esq.  
Milstein, Adelman & Kreger, LLP  
2800 Donald Douglas Loop North  
Santa Monica, CA 90405  
310.396.9635 (fax)

Steven Elster, Esq.  
Law Offices of Steven Elster  
785/E2 Oak Grove Road #201  
Concord, CA 94518-3617  
925.945.1276 (fax)

☒ BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed to the respective address(es) of the party(ies) stated above and providing them to a professional messenger service for service.

☐ BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 5, 2008 at Los Angeles, California.

Tracy Howe

[Print Name of Person Executing Proof]

[Signature]